

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE: . Case No. 15-08397-RLM-7
. .
. .
TOCON HOLDINGS, LLC, . 116 U.S. Courthouse
. 46 East Ohio Street
. Indianapolis, IN 46204
. .
Debtor. . December 16, 2015
. . 9:29 a.m.
.

TRANSCRIPT OF CONTINUED HEARING ON CREDITORS RITA CHAIREZ,
AMOS HOSTETLER, DEBBIE HOSTETLER, BECKY NULL, AND MARIA
TOVAR'S MOTION TO DISMISS WITH AN OBJECTION FILED BY THE
TRUSTEE, THE DEBTOR, AND CREDITOR JOHNSON CONTROLS, INC.;
BRIEF IN SUPPORT FILED BY CREDITOR
BEFORE HONORABLE ROBYN L. MOBERLY
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

For the Debtor: Frank Law, LLC
By: L. LEONA FRANK, ESQ.
155 East Market Street, Suite 860
Indianapolis, IN 46204

For the Chapter 7 Rubin & Levin, P.C.
Trustee, Jenice By: JAMES T. YOUNG, ESQ.
Golson-Dunlap: AMY B. BAKER, ESQ.
500 Marott Center
342 Massachusetts Avenue
Indianapolis, IN 46204

For Creditors Amos Taft, Stettinius & Hollister, LLP
Hostetler, Rita Chairez, By: THOMAS A. BARNARD, ESQ.
Becky Null, Debbie RODNEY L. MICHAEL, JR., ESQ.
Hostetler, Maria Tovar: MICHAEL P. O'NEIL, ESQ.
One Indiana Square, Suite 3500
Indianapolis, IN 46204

Audio Operator: Marcella Lockert

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd):

For Johnson Controls,
Inc.:

Barnes & Thornburg, LLP
By: KELLY J. HARTZLER, ESQ.
700 1st Source Bank Center
100 North Michigan
South Bend, IN 46601

Chadbourne & Parke, LLP
By: THOMAS J. HALL, SR., ESQ.
1301 Avenue of the Americas
New York, NY 10019

TELEPHONIC APPEARANCES:

For First Federal
Savings Bank:

DeLaney, Hartburg, Roth & Garrott, LLP
By: ADRIAN LEE HALVERSTADT, III, ESQ.
533 Warren Street
Huntington, IN 46750

- - -

1 of that, I did not pull a sample. I checked the rest of the
2 piles, the debris piles and the debris that was in the loading
3 docks and did not discover any friable asbestos in my
4 investigation.

5 Q Was that the extent of your investigation that day?

6 A On that -- yes, sir.

7 Q Okay. And you said that you had asked Mr. Swift for some
8 additional documentation, is that documentation attached in
9 your -- in Exhibit 16 to your report?

10 A Yes, it is. It would be -- I'm not sure of the page
11 numbers, but it's towards the end, page -- it might be on Page
12 Number 8. The title is An Analysis of Suspected Asbestos-
13 Containing Materials. That's the start of his -- what he
14 provided me and it goes back three or four pages, maybe six.
15 And it ends with -- the last page is a -- is what he submitted
16 to me as a bill that he had paid for the asbestos abatement.
17 The last page that Mr. Swift's sent me it appears to be faxed,
18 Page Number 8 of his fax.

19 Q And at that point in time, did you believe that the
20 notification of those checks covered the abatement for the
21 entire site?

22 A Yes, I did.

23 Q And why was that?

24 A Well, I -- the buildings were down. I had been on the
25 site previously. Based on the notification and what he told

1 me, I took him at his word that the site had been abated. He
2 provided this information, he provided a -- the notification
3 that is required to be submitted for asbestos abatement. As a
4 matter of fact, there were two notifications submitted.

5 So I'm thinking that the abatement had been completed
6 and I want to say that the inspection in our office, we use the
7 term "a wild goose chase" because there was something going on
8 because the debris wasn't cleaned up, so we have a working
9 dumping situation. But as far as the asbestos was concerned,
10 at that point, I didn't think I had any issues.

11 Q At some point in time, did you later become aware that
12 there was a third demolition done at the property?

13 A I'm not sure I follow.

14 Q Okay. At some point in time did you become aware of a
15 demolition at the property of the two buildings that are
16 identified on Plaintiff's Exhibit 35 in red on the north part
17 of the property?

18 A I became aware of that when we met with you -- I met with
19 you. I do not remember the date, it was last week sometime,
20 so.

21 Q And since that time, have you had an opportunity to review
22 Mr. Carter's (phonetic) testimony?

23 A I have looked it. I have not read every word.

24 Q Do you know who Mr. Carter is?

25 A I've spoken with him on the phone. I can say that he is a

1 licensed asbestos building inspector. But to pick him out of
2 this room, I don't know that I could. I don't -- I've never
3 seen him face-to-face, but I spoke with him on the phone.

4 Q And what did you learn from Mr. Carter's deposition
5 testimony?

6 A I learned that he stated that basically not all the -- all
7 the asbestos had not been abated from the building and some
8 material on pipes and possibly other friable asbestos had been
9 left behind in what has been referred to what I call the north
10 buildings, but here today we referred to them as the add
11 building and the engineering building.

12 Q Did you look for a record of notification of asbestos
13 abatement for those two buildings?

14 A Yes, and I didn't find one.

15 Q Could anyone have removed the asbestos from those two
16 buildings legally without notifying IDEM?

17 A Legally, no, sir.

18 Q If you had been told that those two buildings were
19 demolished without proper asbestos abatement, would your
20 inspection on December 3rd, 2014, have been different?

21 A The inspection may not have been different, but what I
22 would have instructed Mr. Swift to do certainly would have been
23 different, where he needed to go or that stuff he needed to
24 take for cleanup would certainly have been different.

25 Q In your experience as an IDEM inspector, if a building is